

2003 DRAFTING REQUEST

Bill

Received: **08/01/2003**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **Cynthia Kieper**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - maintenance**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Requirements for maintenance

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 08/13/2003	kgilfoy 08/19/2003		_____			
/P1			pgreensl 08/20/2003	_____	lemery 08/20/2003		
/P2	pkahler	kgilfoy	pgreensl	_____	Inorthro		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	11/04/2003	11/06/2003	11/07/2003	_____	11/07/2003		
/1	pkahler 12/12/2003	kgilfoy 12/17/2003	rschluet 12/17/2003	_____ _____	mbarman 12/17/2003	mbarman 12/26/2003	

FE Sent For:

↳ Not Needed

<END>

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12/17/2003 02:12:32 PM

Page 2

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/P2	pkahler	kgilfoy 11-12/17 King	pgreensl 12 17 3 PK		Inorthro		

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<END>

Bill

lemery
08/20/2003

11/1/96

08/20/2003 10:10:13 AM

Page 2

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1?	pkahler	1/01-8/19 Kmg	8/20 PS	8/20 PS/CP			

FE Sent For:

<END>

Kahler, Pam

From: Kieper, Cynthia L.
Sent: Thursday, July 17, 2003 10:51 AM
To: Kahler, Pam
Subject: FW: Scanned documents from CentreWare Network Scanning

-----Original Message-----
From: XeroxScan



DOC.pdf

Sent: Thursday, July 17, 2003 10:45 AM
To: Kieper, Cynthia L.; Rep.Schneider
Subject: Scanned documents from CentreWare Network Scanning

This document was sent to you using CentreWare Network Scanning.

1. Spousal maintenance (alimony), in most cases, should be **rehabilitative** and is **not guaranteed** nor is it a right. Maintenance is not and should not be a privately funded welfare program.

(a) Spouses seeking maintenance should understand that there is no law that provides a payee spouse to take from a marriage without contributing to the marriage, and then continue to share in a payer spouse's income when the marriage ends.

can't
justify late

(b) Maintenance is to be considered as a rehabilitative factor and ordered for the shortest possible length of time. Seeking spouse's life style and economic situation before the marriage and their diligence to seek employment during and after the marriage should be a consideration.

can incorporate
- not
adequate
equity

(1) Rehabilitative means that the receiving spouse should be ^{trying} to achieve the education and skills required to become self-supporting. Therefore their progress should be monitored to guarantee an honest effort with a penalty of loss of maintenance.

may be
ordered

can incorporate

no - induces
a person not to
try to get a
divorce

(c) It would be unreasonable for a spouse to voluntarily leave a marriage far better than they entered it and then expect to continue to enjoy a portion of the payer's income after the marriage unless rehabilitation is necessary.

can't

(1) The seeking spouse should be able to prove a reasonable effort to salvage the marriage or the lack of effort on the payer's part, (i.e.) counseling etc., unless there have been convictions of family violence or drug and alcohol abuse.

?
"no fault"
conflict

(d) It would be unreasonable for a spouse to participate in extramarital activities causing the divorce and then expect to receive any kind of maintenance. By the same token, if it is the payer's extramarital activities, then maintenance should be granted.

- don't
consider
at consider

(e) It would be unreasonable for a spouse to continue to receive maintenance while cohabitating under any circumstances.

can
do

(1) Cohabitation, whether in a heterosexual or homosexual situation, is cause for termination.

2. The court may order rehabilitative maintenance for a spouse if the payer was convicted for family violence, drug and alcohol related convictions, has a gambling addiction, or the marriage was 15 years or longer.

only
circumstances?

(a) The spouse seeking maintenance must show that he/she lacks sufficient resources, due to the marriage, to provide for their minimal reasonable

can now

needs.

✓ (b) The spouse seeking maintenance must show that employment is difficult to maintain or gainful employment is not possible because of a physical or mental disability incurred during the marriage.

✓ (c) Maintenance may be ordered if the payee spouse contributed to the education of the payer raising the income level of that spouse.

*current
law*

✓ 3. Factors for the court to look at when determining eligibility for a spouse to receive maintenance.

✓ (a) All the financial resources of the spouse seeking maintenance. (5) + (3)

*are there
replace current
law?*

✓ (b) Education and employment skills before, during, and after the marriage. (5) + (4)

✓ (c) Time necessary for education or vocational rehabilitation if needed. (6) sort of

✓ (d) Employment history, earning ability, as well as the emotional and physical well being of the spouse before and during the marriage. (2) + (5)

✓ (e) Contributions or sacrifices made by either spouse during the marriage. (9)

✓ (f) The efforts of the payee spouse to obtain suitable employment before, during, and after the marriage.

✓ (1) The judge can deny maintenance if the payee spouse has not exercised due diligence in seeking employment and developing the necessary skills to become self-supporting. The payee should pursue these requirements while the suit is pending, as well as after, or risk loss of the maintenance.

4. Time limits for maintenance unless the parties agree to a different time frame.

*time limits
are
possible*

(a) The court is to limit the maintenance to the shortest time possible for the payee to begin employment that will provide for their minimal reasonable needs.

(b) The order for maintenance is not to exceed a maximum of 3 years from the date the divorce decree was signed.

(1) The time limits may be extended to equal the payee's contribution to the education of the payer.

(2) Disability incurred during the marriage may continue the time frame longer than 3 years. Once the disability has been removed, so

*RP
(6), (7), (9)*

is the extended time frame.

✓ 5. Maintenance shall be limited so as not to exceed the lesser of 20% of the payer's average monthly gross income previous to the divorce decree, (based on 2080 hours per year 40 hour work week), or \$2500 per month. *may not exceed*

(a) The amount set should be only enough to provide the spouse with minimal reasonable needs.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3051/

PJK:.....
P1
km9

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

would like soon

(in 8-13)

D-note

gen cat

1 AN ACT ~~relating to~~; relating to: requirements for ordering maintenance.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 767.26 (intro.) of the statutes is renumbered 767.26 (1m) and
3 amended to read:

4 767.26 (1m) ORDER OF COURT. Upon ~~every~~ a judgment of annulment, divorce,
5 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g)
6 or (j), the court may, subject to sub. (2m), grant an order requiring maintenance
7 payments to either party ~~for a limited or indefinite length of time after considering,~~
8 in the manner provided in this section, as a rehabilitative measure to enable the
9 party for whom maintenance is ordered to acquire the education or skills necessary
10 to become self-supporting.

1 **SECTION 2.** 767.26 (1) of the statutes is renumbered 767.26 (3m) (a) 1.

2 **SECTION 3.** 767.26 (2) of the statutes is renumbered 767.26 (3m) (a) 2. and
3 amended to read:

4 767.26 (3m) (a) 2. The age and physical and emotional health of the parties,
5 both before and during the marriage.

6 History: 1971 c. 220; 1973 c. 12 s. 37; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.26.

6 **SECTION 4.** 767.26 (2m) of the statutes is created to read:

7 767.26 (2m) MANDATORY ELIGIBILITY CRITERIA. (a) The court may order
8 maintenance to a party only if any of the following applies:

9 1. The other party was convicted during the marriage of a drug-related or
10 alcohol-related offense or an offense that involves family violence.

11 2. The other party has a gambling addiction.

12 3. The parties have been married for at least 15 years.

13 (b) If par. (a) is satisfied, the court may order maintenance only if the party
14 seeking maintenance shows either of the following:

15 1. That because of the marriage he or she lacks sufficient resources to provide
16 for his or her minimal, reasonable needs.

17 2. That employment is difficult for the party to maintain, or that gainful
18 employment is not possible for the party to obtain, because of a physical or mental
19 disability incurred by the party during the marriage.

20 **SECTION 5.** 767.26 (3) of the statutes is renumbered 767.26 (3m) (a) 3. and
21 amended to read:

22 767.26 (3m) (a) 3. The division of property made under s. 767.255, and all other
23 financial resources of the party seeking maintenance.

24 History: 1971 c. 220; 1973 c. 12 s. 37; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.26.

SECTION 6. 767.26 (3m) of the statutes is created to read:

Handwritten notes: "is" circled with an arrow pointing to "of the statutes"; "and" crossed out; "financial resources" underlined; "and" crossed out; "and" crossed out; "and" crossed out.

767.26 (3m) FACTORS TO CONSIDER. (a) In determining whether to order maintenance and, subject to sub. (5m), the amount of maintenance to order, the court shall consider all of the following that apply:

7. The efforts of the party seeking maintenance to obtain suitable employment before, during, and after the marriage.

***NOTE: It will be difficult for the court to consider the efforts of the party after the marriage when the court is making the determination regarding maintenance under this section.

***NOTE: This subdivision looks strange all by itself, but the other renumbered paragraphs will fit in as the other subdivisions.

(b) Notwithstanding the court's findings under par. (a), the court may deny maintenance to a party if any of the following applies:

1. The party seeking maintenance engaged in extramarital activities during the marriage.

2. The party seeking maintenance has not made reasonable efforts to obtain employment or develop the skills necessary to become self-supporting.

SECTION 7. 767.26 (4) of the statutes is renumbered 767.26 (3m) (a) 4.

SECTION 8. 767.26 (4m) of the statutes is created to read:

767.26 (4m) LENGTH OF ORDER. (a) ~~The court shall order the~~ payment ~~of~~ for the shortest time necessary for the payee to become employed at a level that provides for the payee's minimal, reasonable needs, but in no case for longer than 3 years.

(b) Notwithstanding par. (a), if the payee during the marriage contributed to the education of the payer, the court may order maintenance to continue until the total amount of maintenance paid equals the amount the payee contributed.

(c) Notwithstanding par. (a), if the payee became disabled during the marriage, the court may order maintenance to continue for as long as the disability continues.

of the court orders maintenance, it shall require

1 **SECTION 9.** 767.26 (5) of the statutes is renumbered 767.26 (3m) (a) 5.

2 **SECTION 10.** 767.26 (5m) of the statutes is created to read:

3 767.26 (5m) AMOUNT OF MAINTENANCE. ~~The court~~ shall set the amount ~~of~~
4 ~~maintenance~~ at a level that does not exceed the amount necessary to meet the
5 minimal, reasonable needs of the payee, but in no case at more than 20% of the
6 payer's average gross monthly income.

7 **SECTION 11.** 767.26 (6) of the statutes is repealed.

8 **SECTION 12.** 767.26 (7) of the statutes is repealed.

9 **SECTION 13.** 767.26 (8) of the statutes is repealed.

10 **SECTION 14.** 767.26 (9) of the statutes is renumbered 767.26 (3m) (a) 6. and
11 amended to read:

12 767.26 (3m) (a) 6. ^{plain space} The contributions and sacrifices of each of the parties during
13 the marriage, including the contribution by one party to the education, training, or
14 increased earning power of the other.

15 History: 1971 c. 220; 1973 c. 12 s. 37; 1977 c. 105; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.26.

16 **SECTION 15.** 767.26 (10) of the statutes is renumbered 767.26 (3m) (a) 8.

17 **SECTION 16.** 767.32 (3) of the statutes is amended to read:

18 767.32 (3) After a final judgment requiring maintenance payments has been
19 rendered and, if the payee has remarried remarries or cohabits with another adult
20 person, regardless of the sex of the other adult person, the court shall, on application
21 of the payer with notice to the payee and upon proof of remarriage or cohabitation,
22 vacate the order requiring such payments.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105.

SECTION 17. Initial applicability.

if the court orders maintenance, it

1 (1) NEW ORDERS. The treatment of section 767.26 (intro.), (1), (2), (2m), (3), (3m),
2 (4), (4m), (5), (5m), (6), (7), (8), (9), and (10) of the statutes first applies to actions or
3 proceedings in which maintenance is sought that are commenced on the effective
4 date of this subsection.

5 (2) REVISIONS. The treatment of section 767.32 (3) of the statutes first applies
6 to actions or proceedings to vacate maintenance orders that are commenced on the
7 effective date of this subsection.

8 (END)

y-vote

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3051/2dn

PJK:K:...

P1
Kmg

I left out some of the suggested provisions because some cannot be legislated (related to what spouses should understand); one was inconsistent with the concept of "no-fault" divorce (requiring a spouse to prove efforts to salvage the marriage).

Many of the suggestions apply under current law, so current law was either left as is or slightly modified.

Note that some factors *may be considered* by the court when the court is deciding whether to order maintenance and that some factors *must be found* by the court before maintenance may be ordered. Are these correct in the draft?

It seems inconsistent to provide that maintenance is rehabilitative and then to require that the other party must have a gambling addiction or must have been convicted of certain offenses before maintenance may be ordered. In those cases, ordering maintenance seems to be more of a punishment to the payer than necessarily rehabilitative for the payee.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
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LRB-3051/P1dn
PJK:kmg:pg

August 20, 2003

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Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3051/12

PJK:kmg:pg

rm is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-20
9/11/4

Yen. Cat.

1 AN ACT *to repeal* 767.26 (6), 767.26 (7) and 767.26 (8); *to renumber* 767.26 (1),
2 767.26 (4), 767.26 (5) and 767.26 (10); *to renumber and amend* 767.26 (intro.),
3 767.26 (2), 767.26 (3) and 767.26 (9); *to amend* 767.32 (3); and *to create* 767.26
4 (2m), 767.26 (3m), 767.26 (4m) and 767.26 (5m) of the statutes; **relating to:**
5 requirements for ordering maintenance.

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9 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g)
10 or (j), the court may, subject to sub. (2m), grant an order requiring maintenance

1 payments to either party ~~for a limited or indefinite length of time after considering,~~
2 in the manner provided in this section, as a rehabilitative measure to enable the
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23 ~~disability~~ ^{that was} incurred by the party during the marriage ^{and that is certified by a physician}

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8 before ~~during~~ ^{and} the ~~marriage~~ ^{pendency of the divorce action}

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19 at a level that provides for the payee's minimal, reasonable needs, but in no case for
20 longer than 3 years.

(b) Notwithstanding par. (a), if the payee during the marriage contributed to the education of the payer, the court may order maintenance to continue until the total amount of maintenance paid equals the amount the payee contributed.

(c) Notwithstanding par. (a), if the payee became disabled during the marriage, the court may order maintenance to continue for as long as the disability continues.

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SECTION 14. 767.26 (9) of the statutes is renumbered 767.26 (3m) (a) 6. and amended to read:

767.26 (3m) (a) 6. The contributions and sacrifices of each of the parties during the marriage, including the contribution by one party to the education, training, or increased earning power of the other.

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of the opposite sex

1 of the payer with notice to the payee and upon proof of ^{the} remarriage or cohabitation,
2 vacate the order requiring such payments.

3 **SECTION 17. Initial applicability.**

4 (1) NEW ORDERS. The treatment of section 767.26 (intro.), (1), (2), (2m), (3), (3m),
5 (4), (4m), (5), (5m), (6), (7), (8), (9), and (10) of the statutes first applies to actions or
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9 to actions or proceedings to vacate maintenance orders that are commenced on the
10 effective date of this subsection.

11 (END)

D. vote

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3051/P2ins
PJK:kmg:pg

INSERT 4-5 ✓

- 1 Not , but in no case after the payee reaches the age that, for a retired worker who
2 was born on the same date as the payee, is full retirement age for the purpose of
3 receiving unreduced social security benefits

(END OF INSERT 4-5)

INSERT 4-11 ✓

- 4 Not , based on a 40-hour work week or the payer's base pay

(END OF INSERT 4-11)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3051/P2dn

PJK:kmg:pg



Representative Schneider:

This redraft makes the following changes:

1. In proposed s. 767.26 (2m) (b) 2., the physical or mental disability must be certified by a physician.
2. In proposed s. 767.26 (3m) (a) 7., the court must consider the efforts of the party seeking maintenance to obtain employment *before and during the pendency of the divorce action*. Cynthia and I discussed requiring the court to consider the efforts made *after the marriage*, but I did not include this language because it would be logically impossible for the court to consider efforts that have not yet occurred when the court is determining maintenance in the divorce action. It might be appropriate for the court to consider those efforts after the divorce is final if a party wants to modify the amount of the maintenance payments under s. 767.32, but not when the court is first ordering it. The court could consider efforts that the party seeking maintenance *intends* to make after the marriage, but what the party intends to do is purely speculative and would be based only on the word of the party seeking maintenance and could not be refuted by the other party.
3. In proposed s. 767.26 (4m) (c), although a court may order maintenance for a disabled payee who became disabled during the marriage for as long as the disability continues, the court may not order it beyond the age that is full retirement age for a worker born on the same date as the payee. You may wish to modify this time limit. There are many variables involved and I'm not sure what your intention is. According to my review of the eligibility requirements for social security benefits, no matter when a person was born, he or she may receive a reduced benefit (if eligible for social security payments) at age 62. If a person waits until "full retirement age," however, the benefit is not reduced, but "full retirement age" increases incrementally from 65 years 2 months for a person born in 1939 to 67 years for a person born in 1960 or later. In addition, the payee may be receiving social security disability payments if his or her disability qualifies. Therefore, I don't know if you want to limit the payment of maintenance to actual receipt of social security payments, the earliest age at which a person could receive reduced benefits (62 years old), or the age at which the payee would receive unreduced benefits, regardless of whether he or she actually receives them (differs, depending on date of birth). The last situation is the one I used in the draft.

↑
that

4. In proposed s. 767.26 (5m), instead of the payer's average gross monthly income, the payer's income that the court uses for setting the maximum level of maintenance is based on a 40-hour work week or the payer's base pay.

→ 5. In proposed s. 767.26 (5m), I also changed "does not exceed *the amount* necessary" to "does not exceed *a monthly amount* necessary" since the amount may not exceed a percentage of the payer's monthly income. Otherwise it might appear that maintenance may not exceed a lump sum that is equal to 20% of the payer's income for one month. ✓

6. In proposed s. 767.32 (3), cohabitation is limited to the opposite sex, and "the" is inserted before "remarriage or cohabitation" to clarify that we are referring to the previously mentioned remarriage or cohabitation.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3051/P2dn
PJK:kmg:pg

November 7, 2003

Representative Schneider:

This redraft makes the following changes:

1. In proposed s. 767.26 (2m) (b) 2., the physical or mental disability must be certified by a physician.
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12-12

Cynthia Kaps (Rep Schneider) & Dan Pavee

p4

(c)

→ until person gets other disab benefit
or for as long as ~~disability~~ disability
continue (as in
current draft)

p2

Delete lines 13-15



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3051/R

PJK:kmg:pg

rm is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Draft

Gen. Cat.

1 AN ACT *to repeal* 767.26 (6), 767.26 (7) and 767.26 (8); *to renumber* 767.26 (1),
2 767.26 (4), 767.26 (5) and 767.26 (10); *to renumber and amend* 767.26 (intro.),
3 767.26 (2), 767.26 (3) and 767.26 (9); *to amend* 767.32 (3); and *to create* 767.26
4 (2m), 767.26 (3m), 767.26 (4m) and 767.26 (5m) of the statutes; **relating to:**
5 requirements for ordering maintenance.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 767.26 (intro.) of the statutes is renumbered 767.26 (1m) and
7 amended to read:
8 767.26 (1m) ORDER OF COURT. Upon every a judgment of annulment, divorce,
9 or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g)
10 or (j), the court may, subject to sub. (2m), grant an order requiring maintenance

1 payments to either party for a limited or indefinite length of time after considering,
2 in the manner provided in this section, as a rehabilitative measure to enable the
3 party for whom maintenance is ordered to acquire the education or skills necessary
4 to become self-supporting.

5 SECTION 2. 767.26 (1) of the statutes is renumbered 767.26 (3m) (a) 1.

6 SECTION 3. 767.26 (2) of the statutes is renumbered 767.26 (3m) (a) 2. and
7 amended to read:

8 767.26 (3m) (a) 2. The age and physical and emotional health of the parties,
9 both before and during the marriage.

10 SECTION 4. 767.26 (2m) of the statutes is created to read:

11 767.26 (2m) ~~MAINTENANCE~~ ELIGIBILITY CRITERIA. (a) The court may order
12 maintenance to a party only if ~~any of the following applies~~ the

13 1. The other party was convicted during the marriage of a drug-related or
14 alcohol-related offense or an offense that involves family violence.

15 2. The other party has a gambling addiction.

16 3. The parties have been married for at least 15 years. ←

17 (b) If par. (a) is satisfied, the court may order maintenance only if the party
18 seeking maintenance shows either of the following:

19 1. That because of the marriage he or she lacks sufficient resources to provide
20 for his or her minimal, reasonable needs.

21 2. That employment is difficult for the party to maintain, or that gainful
22 employment is not possible for the party to obtain, because of a physical or mental
23 disability that was incurred by the party during the marriage and that is certified
24 by a physician.

Insert 2-18

1 **SECTION 5.** 767.26 (3) of the statutes is renumbered 767.26 (3m) (a) 3. and
2 amended to read:

3 767.26 (3m) (a) 3. The division of property made under s. 767.255, and all other
4 financial resources of the party seeking maintenance.

5 **SECTION 6.** 767.26 (3m) of the statutes is created to read:

6 767.26 (3m) FACTORS TO CONSIDER. (a) In determining whether to order
7 maintenance and, subject to sub. (5m), the amount of maintenance to order, the court
8 shall consider all of the following that apply:

9 7. The efforts of the party seeking maintenance to obtain suitable employment
10 before and during the pendency of the ~~My 10/10/02~~ action.

11 (b) Notwithstanding the court's findings under par. (a), the court may deny
12 maintenance to a party if any of the following applies:

13 1. The party seeking maintenance engaged in extramarital activities during
14 the marriage.

15 2. The party seeking maintenance has not made reasonable efforts to obtain
16 employment or develop the skills necessary to become self-supporting.

17 **SECTION 7.** 767.26 (4) of the statutes is renumbered 767.26 (3m) (a) 4.

18 **SECTION 8.** 767.26 (4m) of the statutes is created to read:

19 767.26 (4m) LENGTH OF ORDER. (a) If the court orders maintenance, it shall
20 require payment for the shortest time necessary for the payee to become employed
21 at a level that provides for the payee's minimal, reasonable needs, but in no case for
22 longer than 3 years.

23 (b) Notwithstanding par. (a), if the payee during the marriage contributed to
24 the education of the payer, the court may order maintenance to continue until the
25 total amount of maintenance paid equals the amount the payee contributed.

1 (c) Notwithstanding par. (a), if the payee became disabled during the marriage,
2 the court may order maintenance to continue for as long as the disability continues,
3 but in no case after the payee reaches the age that, for a retired worker who was born
4 on the same date as the payee, is full retirement age for the purpose of receiving
5 unreduced social security benefits.

6 **SECTION 9.** 767.26 (5) of the statutes is renumbered 767.26 (3m) (a) 5.

7 **SECTION 10.** 767.26 (5m) of the statutes is created to read:

8 **767.26 (5m) AMOUNT OF MAINTENANCE.** If the court orders maintenance, it shall
9 set the amount at a level that does not exceed a monthly amount necessary to meet
10 the minimal, reasonable needs of the payee, but in no case at more than 20 percent
11 of the payer's monthly income, based on a 40-hour work week or the payer's base pay.

12 **SECTION 11.** 767.26 (6) of the statutes is repealed.

13 **SECTION 12.** 767.26 (7) of the statutes is repealed.

14 **SECTION 13.** 767.26 (8) of the statutes is repealed.

15 **SECTION 14.** 767.26 (9) of the statutes is renumbered 767.26 (3m) (a) 6. and
16 amended to read:

17 **767.26 (3m) (a) 6.** The contributions and sacrifices of each of the parties during
18 the marriage, including the contribution by one party to the education, training, or
19 increased earning power of the other.

20 **SECTION 15.** 767.26 (10) of the statutes is renumbered 767.26 (3m) (a) 8.

21 **SECTION 16.** 767.32 (3) of the statutes is amended to read:

22 **767.32 (3)** After a final judgment requiring maintenance payments has been
23 rendered and, if the payee has remarried remarries or cohabits with another adult
24 person of the opposite sex, the court shall, on application of the payer with notice to

Insert 4-5

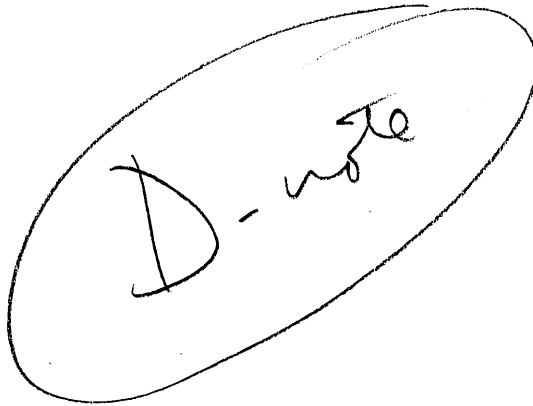
1 the payee and upon proof of the remarriage or cohabitation, vacate the order
2 requiring such payments.

3 **SECTION 17. Initial applicability.**

4 (1) NEW ORDERS. The treatment of section 767.26 (intro.), (1), (2), (2m), (3), (3m),
5 (4), (4m), (5), (5m), (6), (7), (8), (9), and (10) of the statutes first applies to actions or
6 proceedings in which maintenance is sought that are commenced on the effective
7 date of this subsection.

8 (2) REVISIONS. The treatment of section 767.32 (3) of the statutes first applies
9 to actions or proceedings to vacate maintenance orders that are commenced on the
10 effective date of this subsection.

11 (END)

A handwritten signature, possibly "D. note", is enclosed within a hand-drawn oval. The signature is written in a cursive, informal style.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3051/lins
PJK:kmg:pg

INSERT A

Under current law, in an annulment, divorce, or legal separation, the court may order one party to pay maintenance (formerly known as alimony) to the other party. The statutes set out factors that a court must consider in ordering maintenance, such as the length of the marriage, the educational level of the parties at the time of the marriage and at the commencement of the action, the age and physical and emotional health of each party, and the contribution that a party has made to the increased earning power of the other party. The amount of maintenance and the length of time that it must be paid are in the court's discretion.

This bill provides, as an overall guiding principle, that maintenance is a rehabilitative measure to enable the party for whom it is ordered to acquire the education or skills to become self-supporting and sets out more specific standards for courts to use in ordering maintenance. Under the bill, a court may not order maintenance unless the parties have been married for at least 15 years, which eliminates the availability of maintenance in most annulment actions, and the party seeking maintenance shows either: 1) that because of the marriage, he or she lacks sufficient resources to provide for his or her minimal, reasonable needs, or 2) that employment is difficult for the party to obtain or maintain because of a physical or mental disability that was incurred during the marriage. ✓ (j) ✓

The bill, for the most part, retains the factors under current law for the court to consider when ordering maintenance, but eliminates some of the factors under current law, such as the tax consequences to each party and any mutual agreements made before or during marriage concerning any arrangement for the financial support of the parties. The bill adds as factors to consider all financial resources of the party seeking maintenance in addition to the property division, the contributions and sacrifices of each of the parties during the marriage, and the efforts of the party seeking maintenance to obtain suitable employment before and during the pendency of the action. The bill provides that, regardless of the court's findings after considering the other factors, the court may deny maintenance if the party seeking maintenance engaged in extramarital activities during the marriage or has not made reasonable efforts to obtain employment or develop skills to become self-supporting.

The bill limits the length of maintenance to the shortest time necessary for the payee to become employed at a level that provides for minimal, reasonable needs, but not more than three years, with two exceptions. If the payee contributed to the education of the payer, maintenance may continue until it equals the amount that the payee contributed; if the payee became disabled during the marriage, maintenance may continue for the shorter of: 1) as long as the disability continues but not past the age at which a person the same age as the payee would be eligible for unreduced social security benefits, or 2) until the payee receives or is eligible to receive disability payments or other benefits on account of the disability. The bill limits the amount of maintenance to the amount necessary to meet minimal, reasonable needs, but not more than 20 percent of the payer's monthly income, based on a 40-hour work week or the payer's base pay. (j)

Under current law, the court is required to terminate maintenance, upon application by the payer, if the payee remarries. The bill adds that the court must also terminate maintenance, upon application by the payer, if the payee cohabits with another adult person of the opposite sex.

(END OF INSERT A)

INSERT 2-18 ✓

- 1 767.26 (2m) ELIGIBILITY CRITERIA. The court may order maintenance to a party
2 only if both of the following conditions are satisfied:
3 (a) The parties have been married for at least 15 years.
4 (b) The party seeking maintenance shows either of the following:

(END OF INSERT 2-18)

INSERT 4-5 ✓

- 5 (c) Notwithstanding par. (a), if the payee became disabled during the marriage,
6 the court may order maintenance to continue for either of the following periods of
7 time, whichever is shorter:
8 1. For as long as the disability continues, but in no case after the payee reaches
9 the age that, for a retired worker who was born on the same date as the payee, is full
10 retirement age for the purpose of receiving unreduced social security benefits.
11 2. Until the payee receives or becomes eligible to receive disability payments
12 or other benefits paid on account of his or her disability.

(END OF INSERT 4-5)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3051/1dn
PJK:kmg:pg



This version of the bill modifies proposed s. 767.26 (2m) and (4m) (c). In proposed s. 767.26 (3m) (a) 7., I removed "divorce" before "action," since maintenance may be ordered in more types of actions than just divorce.

Pamela J. Kahler
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3051/1dn
PJK:kmg:rs

December 17, 2003

This version of the bill modifies proposed s. 767.26 (2m) and (4m) (c). In proposed s. 767.26 (3m) (a) 7., I removed "divorce" before "action," since maintenance may be ordered in more types of actions than just divorce.

Pamela J. Kahler
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Barman, Mike

From: Schneider, Marlin
Sent: Tuesday, December 23, 2003 5:04 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3051/1 Topic: Requirements for maintenance

It has been requested by <Schneider, Marlin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3051/1 Topic: Requirements for maintenance